IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 431.

ALFRED TESTA and PHILIP B. FLEMING, Temporary Controls Administrator, *Petitioners*,

v.

HARRY KATT.

On Writ of Certiorari to the Superior Court of the State of Rhode Island and Providence Plantations for Providence and Bristol Counties.

BRIEF FOR RESPONDENT.

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BRIEF FOR RESPONDENT.

OPINION BELOW

No opinion was written by the Superior Court. The opinion of the Supreme Court of Rhode Island (R. 36-38) is reported at 71 R. I. 472, 47 A. (2d) 312.

JURISDICTION

The opinion of the Supreme Court of Rhode Island was rendered May 23, 1946 (R. 36-38). The final judgment of the Superior Court was entered August 16,

1946 (R. 40). The petition for a writ of certiorari was filed on August 22, 1946, and granted October 28, 1946 (R. 42). The jurisdiction of this Court rests upon § 237(b) of the Judicial Code, as amended by the Act of February 13, 1925.

STATEMENT OF THE CASE

Respondent is in complete agreement with the statement of facts in petitioners' brief (pp. 2-5). We wish to emphasize, however, the manner in which the issues in this case have been brought before this Court.

Respondent demurred to the declaration in the Superior Court on the ground that the court had no jurisdiction of the case (R. 34, 36, 40). The demurrer was overruled, and respondent's appeal to the Supreme Court of Rhode Island on a bill of exceptions was dismissed by that court as premature (R. 40). The case was remanded and tried before the Superior Court and a jury (R. 4). Following an adverse verdict, respondent again appealed to the Supreme Court of Rhode Island (R. 34, 35), and this time the Supreme Court of Rhode Island sustained respondent's exception to the overruling of his demurrer. (R. 36-38). It was pursuant to this ruling that the Superior Court issued the final judgment brought here on writ of certiorari. (R. 42)

The precise question before this Court, therefore, is whether the Supreme Court of Rhode Island properly sustained respondent's exception to the overruling of his demurrer to the jurisdiction of the Rhode Island Superior Court.

ARGUMENT

I.

THE RHODE ISLAND COURTS DO NOT HAVE JURISDICTION TO ENTERTAIN CONSUMER ACTIONS UNDER THE EMERGENCY PRICE CONTROL ACT.

A. *Enforcement of Penal Statutes.*—It is an established rule of Anglo-American jurisprudence that the courts of a state are not open to proceedings to enforce a penalty under statutes other than its own. The rule is old, and its history is not clear; but it is general in application.[1] It has been carried into the *Restatement of Conflict of Laws.*[2] It has been invoked by the federal courts in regard to state statutes.[3] It has been applied in the past by state courts to federal penal statutes, and this application has been recognized both by this Court and by inferior federal courts.[4] It is the rule

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[1] *The Antelope*, 10 Wheat. 66, 6 L. Ed. 268; *Huntington* v. *Attrill* [1893] A. C. 150; 3 Beale, *Conflict of Laws* (1935), § 611.1; Goodrich, *Conflict of Laws* (1938), §9; Leflar, *Extrastate Enforcement of Penal and Governmental Claims*, 46 Harv. L. R. 193.

[2] §611.

[3] *Texas* v. *Donoghue*, 302 U. S. 284, 82 L. Ed. 264; *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265, 32 L. Ed. 239; *Gwin* v. *Barton*, 6 How. 7, 12 L. Ed. 321; *Gwin* v. *Breedlove*, 2 How. 29, 11 L. Ed. 167.

[4] State cases applying the rule are: *Davison* v. *Champlin*, 7 Conn. 244; *Ely* v. *Peck*, 7 Conn. 239; *Mo. Riv. Tel. Co.* v. *Nat. Bank*, 74 Ill. 217; *Ward* v. *Jenkins*, 10 Met. (Mass.) 583; *State* v. *Pike*, 15 N. H. 83; *United States* v. *Lathrop*, 17 Johns. (N. Y.) 4; *United States* v. *Campbell*, Tappan (Ohio) 61; *State* v. *McBride*, 1 Rice (S. C.) 400; *Jackson* v. *Rose*, 2 Va. Cas. 34. The application of this rule by state courts was recognized by this Court and by inferior federal courts in the following cases: *Robertson* v. *Baldwin*, 165 U. S. 275, 41 L. Ed. 715; *Huntington* v. *Attrill*, 146 U. S. 657, 36 L. Ed. 1123; *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 4 L. Ed. 97; *Western Fruit Growers* v. *United States*, 124 F. (2d) 381 (C. C. A. 9th, 1941); *Stearns* v. *United States*, 2 Paine 300, 22 Fed. Cas. 1188.

in Rhode Island, established in cases dating back to the 1880's and left untouched by subsequent amendments of the constitution of Rhode Island and by legislation affecting the jurisdiction of its courts.[5]

B. *What Is Penal—General Law.*—Although the existence of this rule of jurisdiction has been universally acknowledged, there has been a divergence of judicial opinion as to what laws are penal for the purposes of the rule. In Rhode Island, as in many other jurisdictions, it has been consistently held that a law is penal when its primary effect is to impose a penalty for viola-

[5] This rule was first expressed in *O'Reilly* v. *New York & N. E. R. Co.*, 16 R. I. 388 (1889) and affirmed in *McLay* v. *Slade*, 48 R. I. 357 (1927) after having been explained in *Gardner* v. *New York, N. E. R. Co.*, 17 R. I. 790 (1882). The jurisdiction of the District Court in Rhode Island at the time of the *O'Reilly case*, stated in the Act of May 27, 1886, extended to "all civil actions". The jurisdiction of the District Court was later reasserted in the same terms by the Court and Practice Act of 1905 which provided for a new Superior Court with jurisdiction over "all actions at law" involving over $500 except a few specified classes. The 1905 statute was amended in 1929 by P. L. 1929, Ch. 1325 and Ch. 1331, but only the jurisdictional amounts were affected. The act, as amended in 1929, was with no significant change carried over into the present Rhode Island law, Ch. 500, §28, and Ch. 496, §7 of the General Laws of Rhode Island (1938).

The Constitution of Rhode Island has been amended with regard to the jurisdiction of the state's courts since the O'Reilly case, but these amendments, in 1903, did not affect the type of cases over which the District Courts might take jurisdiction.

Petitioners' brief (p. 11) points out that the jurisdiction of the Rhode Island District Courts specifically includes actions for civil penalties. A reading of the Rhode Island law relating to fines and penalties, however, shows clearly that this jurisdiction extends only to civil penalties arising under the laws of Rhode Island. Ch. 631, General Laws of Rhode Island (1938).

tion.[6] This view has also been adopted in the *Restatement of Conflict of Laws*.[7] As we understand the contentions of the petitioners, they concede that the Supreme Court of Rhode Island properly interpreted that view in holding actions under § 205(e) of the Emergency Price Control Act, as amended, to be penal, and, accordingly beyond the jurisdiction of the Rhode Island courts. Insofar as the petitioners discuss the matter at all, however, they fail fully to consider the basis of the holding. The court held the statute to be penal within the Rhode Island rule of jurisdiction because it provides for minimum awards and multiple awards which are recoverable by either the consumer or the United States government. We believe that the court was compelled to classify a consumer action as penal within the Rhode Island rule, especially when it is considered that the right of a consumer to institute an action under § 205(e) of the Act can be cut off thirty days after it accrues by the commencement of a suit upon the same claim on behalf of the United States government. This point is discussed more fully in the next section of this brief.

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[6] *Newman* v. *George A. Fuller Co.*, 48 A. (2d) 345; *Robinson* v. *Norato*, 71 R. I. 256, 43 A. (2d) 467; *McLay* v. *Slade*, 48 R. I. 357; *O'Reilly* v. *N. Y. & N. E. R. Co.*, 16 R. I. 388; *see also Gardner* v. *New York & N. E. R. Co.*, 17 R. I. 790, 24 Atl. 831, and *Aylsworth* v. *Curtis*, 19 R. I. 517, 34 Atl. 1109.

Petitioners' brief (pp. 36-37) gives the impression that Rhode Island is alone in holding penal a wrongful death statute of the Massachusetts type. But see *Raisor* v. *Chicago & A. R. Co.*, 215 Ill. 47, 74 N. E. 69; *VanCamp* v. *Aldrich*, 5 Ohio Dec. Reprint 92; *Gardner* v. *Rumsey*, 81 Okla. 20; *Clay* v. *Atchison, T. & S. F. R. Co.*, 228 S. W. 907 (Tex. 1921) (affirming 201 S. W. 1072); Leflar (supra p. 8) pp. 203-207, especially footnote 30, and Annotation 62 A. L. R. 1330.

[7] §611.a.

C. *What Is Penal—Huntington* v. *Attrill.*—The petitioners point to, and rely heavily upon, another view as to what statutes are penal. It is the view adopted by this court in *Huntington* v. *Attrill,* 146 U. S. 657, 36 L. Ed. 1123, to test whether an out-of-state judgment is entitled to full faith and credit. The expression of that view most favorable to the petitioners is that a statute can be penal only when an award is recoverable on behalf of the government. Even in this view, actions under § 205(e) have been held to be penal for various purposes by both state and federal courts when instituted by the Administrator. *Bowles* v. *Farmers National Bank,* 147 F. (2d) 425 (C. C. A. 6th 1945); *Brown* v. *Glick Bros. Lumber Co.,* 52 F. Supp. 913 (S. D. Cal. 1943); reversed on other grounds in *Bowles* v. *Glick Bros. Lumber Co.,* 146 F. (2d) 566 (C. C. A. 9th, 1945), cert. den. 325 U. S. 877, 89 L. Ed. 1994; *Bowles* v. *Montgomery,* 66 F. Supp. 889 (W. D. Pa. 1946); *Bowles* v. *Trowbridge,* 60 F. Supp. 48 (N. D. Cal. 1945); *Bowles* v. *Heckman,* 64 N. E. (2d) 660 (Ind. 1946); *Porter* v. *Russell,* 64 N. Y. S. (2d) 655; but cf. *Bowles* v. *American Stores,* 139 F. (2d) 377 (U. S. App. D. C. 1943), cert. den. 322 U. S. 730, 88 L. Ed. 1565.[8] Consumer actions under that provision have also been held to be penal within this view. *Stevenson* v. *Stoufer,* 21

[8] The cases cited in the text rely on *Huntington* v. *Attrill* in holding such actions penal. In addition, holding §205(e) penal without reference to *Huntington* v. *Attrill,* are *Bowles* v. *Griffin,* 151 F. (2d) 458 (C. C. A. 5th, 1945); *Bowles* v. *Nasif,* 58 F. Supp. 644 (W. D. La. 1945); *Bowles* v. *Beatrice Creamery Co.,* 56 F. Supp. 805 (D. Wyo. 1944) reversed on other grounds 146 F. (2d) 774 (C. C. A. 10th, 1944); *Bowles* v. *Rhodes,* 3 Pike & Fischer O. P. A. Opinions & Decisions, 2136 (Washington Superior Ct., King County 1945). It is significant that whereas three Circuit Courts of Appeals have held §205(e) penal, only the Court of Appeals for the District of Columbia has held it remedial.

N. W. (2d) 287 (Iowa, 1946); *Zuest* v. *Ingra*, 134 N. J. L. 15, (2d) 810; cf. *Bowles* v. *Farmers National Bank*, 147 F. (2d) 425 (C. C. A. 6th 1945).[9]

Under the provisions of § 205(e), the Administrator alone may institute suit for any violations occurring in purchases for purposes other than ultimate use or consumption. A buyer is given the right to institute a suit for a violation only if he is an ultimate consumer. His exclusive right is of short duration—30 days. A consumer may file an action after the expiration of that period only at the sufferance of the Administrator, who may bar such an action by first commencing suit himself. Even in cases prosecuted by the consumer, the court having jurisdiction of the action must under § 205(d) certify to the Administrator the fact that such action has been instituted and must grant the Administrator's application to intervene. The Administrator has taken advantage of that provision in this very case. With respect to consumer actions, therefore, § 205(e) represents a new departure in the enforcement of federal legislation. To our knowledge there has been no similar enforcement scheme in the history of federal legislation. These novel provisions were no doubt made necessary by the scope of the enforcement task. But in the enforcement scheme of the Act, we believe that consumer actions occupy a place more closely identified with informer actions authorized in the past in aid of

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[9] Holding consumer actions under §205(e) penal without reference to *Huntington* v. *Attrill* are: *Thierry* v. *Gilbert*, 147 F. (2d) 603 (C. C. A. 1st, 1945); *Miller* v. *Municipal Court of Los Angeles*, 22 Cal. (2d) 818, 142 P. (2d) 297; *Dunakin* v. *Southwestern Consumers Co-op. Assn.*, 49 N. M. 69, 157 P. (2d) 243; and *Hilgreen* v. *Sherman's Cleaners and Tailors Inc.*, 225 N. C. 656.

enforcement of governmental purposes both state and federal,[10] than with actions brought under the Fair Labor Standards Act, with which the petitioners attempt to associate them. Indeed, the Supreme Court of Rhode Island itself has sharply distinguished consumer actions under § 205 (e) of the Emergency Price Control Act from actions under § 16(b) of the Fair Labor Standards Act in an opinion subsequent to its decision in the present case, in which the court held actions under the Fair Labor Standards Act to be remedial—not

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[10] The Senate Report on the Stabilization Act of 1944, which amended §205(e) of the Emergency Price Control Act states: "This action is the people's remedy against inflation. It was written into the statute because the Congress recognized the practical need of this aid to enforcement. It will be effective only if consumers are given sufficient incentive for taking action. They will not have such an incentive unless they are entitled to receive at least $50, and are entitled to recover it by showing only that the violation occurred, and without litigating issues relating to culpability." Sen. Rep. No. 922, 78th Congress, 2nd Session, May 30, 1944, p. 14. In 1945 this section was amended to provide a minimum recovery of $25 instead of $50.

For typical informer actions see *Beals* v. *Thurlow*, 63 Maine 9; *Cole* v. *Groves*, 134 Mass 471; *Read* v. *Stewart*, 129 Mass. 407; *Bones* v. *Booth*, 2 W. Bl. 1226. These cases hold that the action of an informer on a gambling statute is penal. The Massachusetts and Maine statutes are noteworthy in that the informer is allowed to recover treble the amount of the loss and may bring the action only if the loser fails to do so within 3 months. See also *Bradley* v. *United States*, 12 Ct. Cls. 578, affirmed 104 U. S. 442, 26 L. Ed. 824, allowing an informer to sue for penalty involved in customs frauds; *Pollock* v. *Steam Boat Laura*, 5 Fed. 133 (S. D. N. Y. 1880), affirmed 114 U. S. 411, 29 L. Ed. 147, allowing an informer to sue for penalty for violation of a certificate of inspection; and *Miles* v. *Metzger*, 316 Pa. 211, 173 Atl. 285, allowing an informer to recover one fourth of the value of property escheated as the result of his information.

penal—within the Rhode Island rule of jurisdiction. *Newman* v. *George A. Fuller Co.*, 48 A. (2d) 345.[11]

The opinion in *Huntington* v. *Attrill* indicates that informer actions fall within the concept of a penal action there expressed.[12] This Court there quoted with approval the opinion of the Privy Council of England in a case between the same parties in which it is stated that penalties fall within the jurisdictional rule only "in cases where those penalties were recoverable at the instance of the State, or of an official duly authorized to prosecute on its behalf, or of a member of the public in the character of a common informer. An action by the latter was regarded as an *actio popularis* pursued, not in his own individual interest, but in the interest of the whole community."[13]

In view of the nature of consumer actions and their place in the enforcement scheme of the Emergency Price Control Act, we believe that the assertion of the petitioners that consumer actions are clearly remedial and not penal under the rule adopted in *Huntington* v. *Attrill* is neither correct in principle nor supported by any of the cases cited in their brief (Pet. Br., pp. 38-40).[14]

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[11] Petitioners have made much of the point (Pet. Br. pp. 8, 39) that this Court, under the rule of *Huntington* v. *Attrill*, has held actions brought in respect of violations of the Fair Labor Standards Act to be remedial—not penal. The apparent implication intended is that the Rhode Island courts would hold such actions to be penal. Petitioners' brief, however, does not mention in this connection or otherwise, that the Supreme Court of Rhode Island has likewise held such actions to be remedial under the law of Rhode Island.

[12] 146 U. S. 657, 667, 36 L. Ed. 1123, 1128.

[13] *Huntington* v. *Attrill*, [1893] A. C. 150, 158.

[14] See also p. 6, supra.

D. *What Law Applies In Rhode Island.*—The Supreme Court of Rhode Island, however, did not consider in its opinion in this case or in *Robinson* v. *Norato*, 71 R. I. 236, 43 A. (2d) 467, upon which it relied in this case, whether consumer actions are penal within the view of *Huntington* v. *Attrill*. The court in effect held that in determining whether the statute was penal it was bound to apply the test established by Rhode Island law. We believe the petitioners concede that this holding is in accordance with generally accepted law *in the absence of constitutional considerations* (Pet. Br. p. 35). This court has recognized the principle upon which the Supreme Court of Rhode Island based its holding:

> "The test is not by what name the statute is called by the Legislature or the courts of the State in which it was passed but whether it appears to the tribunal which is called upon to enforce it to be, in its essential character and effect a punishment of an offence against the public, or a grant of a civil right to a private person." *Huntington* v. *Attrill*, 146 U. S. 657, 683, 36 L. Ed. 1123, 1133.[15]

II.

THE RULE OF JURISDICTION INVOKED BY THE RHODE ISLAND COURT IS NOT UNCONSTITUTIONAL.

Where the petitioners take issue with the Supreme Court of Rhode Island is upon its holding that the only constitutional compulsion upon the court in this case was to apply the established Rhode Island law without discrimination. The petitioners contend in effect that, assuming § 205(e) to be penal, the Supremacy Clause of the Constitution strikes down the universally recog-

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[15] See also *Southern Rwy. Co. v. Decker*, 5 Ga. App. 21, 62 S. E. 678; *Hill* v. *Railroad*, 77 N. H. 151; *Gardner* v. *Rumsey*, 81 Okla. 20; *Huntington* v. *Attrill* [1893] A. C. 150, 155; Leflar, supra, at pp. 205 and 225; 23 *Am. Jur.* 648; 21 *C. J. S.* 359.

nized jurisdictional limitation upon state courts with reference to penalties, and does so without regard to the long history of the limitation, its purpose, its prior recognition by this Court, and the intent of Congress.

A. *The Intent of Congress.*—In connection with our analysis of the petitioners' contention concerning the Supremacy Clause, we believe it is essential to point out that there is *not* involved in this case any federal statute in which Congress purported to impose jurisdiction on state courts. The language Congress chose to use in the Emergency Price Control Act in relation to state court jurisdiction is similar to the language used in the Federal Employers' Liability Act.[16] That language has been consistently construed by this court to represent an *authorization* rather than a *requirement*, so far as Congress is concerned. *Second Employers' Liability Cases*, 223 U. S. 1, 56 L. Ed. 327; *Herb* v. *Pitcairn*, 324 U. S. 117, 89 L. Ed. 789; *McKnett* v. *St. Louis and S. F. Ry Co.*, 292 U. S. 230, 78 L. Ed. 1227; *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 73 L. Ed. 747.

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[16] §205(e) of the Emergency Price Control Act reads:

"The district courts shall have jurisdiction of criminal proceedings for violation of section 4 of this Act, and concurrently, with state and territorial courts, of all other proceedings under section 205 of this Act." §205(e) states: "Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction." This latter clause is merely permissive and in no wise alters the grant of jurisdiction made in §205(e).

§6 of the Federal Employers' Liability Act, as amended in 1910, reads: "The jurisdiction of the courts of the United States under this act shall be concurrent with that of the courts of the several states, and no case arising under the Act and brought in any state court of competent jurisdiction shall be removed to any court of the United States."

Petitioners have not argued that Congress intended in § 205(e) to enlarge the jurisdiction of state courts beyond that provided in the Federal Employers' Liability Act. We find nothing in the legislative history of the Emergency Price Control Act that suggests any such intent to extend jurisdiction. Indeed, petitioners' argument as to the scope of the Supremacy Clause, resting wholly on cases arising under the Federal Employers' Liability Act, would seem to be a tacit admission that the jurisdictional area in both statutes is identical.

The language of this Court in previous cases raises grave doubts whether Congress, even if it should so desire, could constitutionally compel a state court to take jurisdiction of questions clearly beyond the scope of its power under state law. *Huntington* v. *Attrill,* 146 U. S. 657, 672, 36 L. Ed. 1123, 1129; *Houston* v. *Moore,* 5 Wheat. 1, 27, 5 L. Ed. 19, 25; *Martin* v. *Hunter's Lessee,* 1 Wheat. 304, 337, 4 L. Ed. 97, 105; *cf. United States* v. *Lathrop,* 17 John. (N. Y.) 4. We know of no language to the contrary.

Since, therefore, an interpretation of the Emergency Price Control Act as *requiring* state courts to entertain actions despite impediments in jurisdiction would raise grave constitutional questions and ought not to be adopted in the absence of a clearly-expressed intent of Congress, and since the alternative interpretation of the Act as *authorizing* jurisdiction is clearly reasonable, this Court, in accordance with its long-standing practice, will construe the statute as authorizing jurisdiction, in order to avoid the constitutional question that would otherwise be raised. *Herb* v. *Pitcairn,* 324 U. S. 117, 128, 89 L. Ed. 789, 796; *Alma Motor Co.* v. *Timken Detroit Axle Co.,* — U. S. —, 91 L. Ed. (Adv. Ops.) 151.

154; *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 461-2, 89 L. Ed. 1725, 1734-5.

We have in this case, therefore, no issue whether Congress under the Supremacy Clause could, if it so intended, require a state to open its courts to actions based on federal penal statutes against the universally recognized jurisdictional limitation involved in this case.

The argument of the petitioners must be, therefore, that the Supremacy Clause operates to *impose* jurisdiction without regard to the intent of Congress. We believe that the Supremacy Clause is not self-operative. If the Supremacy Clause operates in this case at all, it operates to carry out the will of Congress as expressed in the Emergency Price Control Act, and, as in the Federal Employers' Liability Act, there "is nothing in the act of Congress that purports to force a duty upon such courts against an otherwise valid excuse." *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 388, 73 L. Ed. 747, 752. Indeed, the operation of the Supremacy Clause in the manner suggested by the petitioners would deprive Congress of the power to exercise any choice to authorize: it could only impose or exclude.

In pointing out the fallacy of the extreme position taken by the petitioners, we do not mean to suggest that we have disposed of all the constitutional considerations in this case. We will discuss in the next section of this brief the constitutional considerations applicable here. But in the face of a long established and widely recognized limitation upon the jurisdiction of a state court we believe that the Supremacy Clause does not operate by itself, without regard to the will of Congress, to impose on the state court the jurisdiction to entertain an action based on a federal penal statute.

B. *The Constitutional Considerations.*—We recognize that no state's local policy may prevail over the

will of Congress, validly exercised, and that no state or state court may act with the purpose of hindering the execution of that will. We recognize the supervisory power of this Court to sweep aside any jurisdictional limitation imposed by a state on its courts for the purpose of hindering the execution of federal policy. We recognize a similar supervisory power to prevent state courts from construing the limits of their jurisdiction to achieve the same purpose. We believe these are the considerations which have been summed up by this Court in the general proposition that a state or state court may not discriminate against rights created by federal law. These we believe to be the criteria of constitutionality in this case.

The petitioners have set out at some length (Pet Br. pp. 13-25) a number of cases in support of their contention that the Supremacy Clause operates in this case to impose jurisdiction without regard to the intent of Congress. We propose here to reexamine those cases in order to show that they establish the constitutional criteria outlined in the preceding paragraph—not the contention of the petitioners.

Claflin v. *Houseman*, 93 U. S. 130, 23 L. Ed. 833, from which the petitioners quote at length, was a civil suit by an assignee in bankruptcy to set aside a preference. The New York Supreme Court took jurisdiction and gave judgment by default to the assignee. Against the claim that an assignee in bankruptcy could sue only in the federal courts, this court upheld the jurisdiction exercised by the state court. There was involved in the case no question of discrimination against federal rights, or of the operation of the Supremacy Clause or of the enforcement of a federal penalty in a state court. Even as to the language of the court quoted by the petitioners, the term "penalty" was used in a sense that lends no

aid or comfort to the contentions of the petitioners.[17] The relationship of *Claflin* v. *Houseman* to the specific issues in this case has already been passed upon by this court:

> "Upon similar grounds, the courts of a State cannot be compelled to take jurisdiction of a suit to recover a like penalty for a violation of a law of the United States. *Martin* v. *Hunter*, 14 U. S. 1 Wheat. 304, 330, 337; *United States* v. *Lathrop*, 17 Johns. 4; *Delafield* v. *Illinois*, 2 Hill. 159, 169; *Jackson* v. *Rose*, 2 Va. Cas. 34; *Ely* v. *Peck*, 7 Conn. 239; *Davidson* v. *Champlin*, 7 Conn. 244; *Haney* v. *Sharp*, 1 Dana. 442; *State* v. *Pike*, 15 N. H. 83, 85; *Ward* v. *Jenkins*, 10 Met. 583, 587; 1 Kent. Com. 402-404. The only ground ever suggested for maintaining such suits in a state court is that the laws of the United States are in effect laws of each State. *Claflin* v. *Houseman*, 93 U. S. 130, 137; Platt, J., in *United States* v. *Lathrop*, 17 Johns. 22; *Ordway* v. *Central Nat. Bank of Baltimore*, 47 Md. 217. But in *Claflin* v. *Houseman* the point adjudged was that an assignee under the bankrupt law of the United States could assert in a state court the title vested in him by the assignment in bankruptcy; and Mr. Justice Bradley, who delivered the opinion in that case, said the year before, when sitting in the circuit court, and speaking of a prosecution in a court of the State of Georgia for perjury committed in that State in testifying before a commissioner of the circuit court of the United States, 'It would be a manifest incongruity for one sovereignty to punish a person for an offense committed against the laws of another sovereignty.' *Ex parte Bridges*, 2 Wood. 428, 430. See also *Re Loney*, 134 U. S. 372." *Huntington* v. *Attrill*, 146 U. S. 657, 672, 36 L. Ed. 1123, 1129.

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[17] See *infra* p. 16.

In the *Second Employers' Liability Cases* (*Mondou* v. *New York, N. H. & H. R. Co.*), 223 U. S. 1, 56 L. Ed. 327, a state court, having the power to entertain a tort claim under the Federal Employers' Liability Act, refused to exercise that power because the federal policy as expressed in that act conflicted, in the opinion of the court, with the policy of the state in respect of employers' liability. This Court struck down the decision as an unjustified interference with the execution of federal policy, taking elaborate pains to explain that no question of jurisdiction was involved. It held simply that no local policy of a state may prevail against the will of Congress properly exercised. It also made clear that its decision was limited to rights of civil recovery, going so far as to interpolate after the word "penalty" in the language from *Claflin* v. *Houseman* quoted in the petitioners' brief at page 14, a caveat that the word as used in the latter case meant "civil and remedial".[18] It is significant that the issues of the case framed by the court did not require any reference to its landmark decision concerning penalties in *Huntington* v. *Attrill*.

The petitioners, by linking the issues now before the court with language torn from its context in the *Second Employers' Liability Cases* (Pet. Br. pp. 23-24), attempt solely by the magic of association to transform the established rule of jurisdiction under examination in this case into an arbitrary exercise of discretion on the part of the Supreme Court of Rhode Island to trample under foot the substance of the Emergency Price Control Act. If anything is clear in this case, it is that this rule is not a rule of discretion and that the proper application of the rule does not turn upon any opinion of the court as to the existence of conflict be-

[18] 231 U. S. 1, 57, 56 L. Ed. 329, 349.

tween the policies of the state and federal governments. There is no question of policy in this case.

This court redefined in *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 73 L. Ed. 747, the scope of its decision in the *Second Employers' Liability Cases*. In that case the New York court, having jurisdiction over both the persons and the subject matter of the dispute, nevertheless exercised a discretion with which it was vested to reject an action under the Federal Employers' Liability Act because the action arose in Connecticut. It was contended by the petitioner in that case that "the jurisdiction is imposed by the Employers' Liability Act when, as here, the court has authority to entertain the suit."[19] As against that contention, this Court upheld the state court. It seems clear from the opinion of this Court that the state court was upheld because, even in the face of admitted jurisdiction, the state court had a recognizable basis for its decision other than a purpose to hinder the execution of federal policy.[20]

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[19] 279 U. S. 377, 385, 73 L. Ed. 747, 751.

[20] The petitioners belittle the significance of the *Douglas case* as a restatement of the principle involved in the *Second Employers' Liability Cases;* they attempt to dispose of it in a brief footnote on page 15 of their brief, omitting facts material here and distorting and limiting the rationale of the opinion to fit their novel concept of "discrimination". They say there: "No discrimination against a federally created cause of action was involved, since a similar cause of action, if provided for by New York law, would have met the same fate." The implication of this statement is that the New York courts were vested with discretion to reject a suit between a non-resident and a foreign corporation doing business in the state, where the suit arose under New York law. This is incorrect. The New York courts were not empowered to reject such an action. The only discretion vested in the state courts, and this discretion was vested by consistent judicial construction—not by statute—, was to reject an action between such parties

Thus we believe it is clear that the *Second Employers' Liability Cases* and the *Douglas case* establish the following principles, respectively: (1) that conflict between the policies of the state and federal governments cannot constitutionally be the basis for the refusal of a state court, having jurisdiction, to entertain a civil and remedial action under the Federal Employers' Liability Act; and (2) that a state court having jurisdiction may nevertheless refuse to entertain such an action on some other rational ground. Neither case indicates the slightest intention on the part of this Court to invoke any new and far-reaching constitutional doctrine designed to tear down established state rules of jurisdiction in the name of the Supremacy Clause without regard to the intent of Congress. Indeed, in both cases, this Court made it as plain as possible that the intention of the Court was quite the opposite.

On the other hand, we recognize, as we have already stated, that this Court cannot ignore an attempt of a state to hinder the execution of federal policy in the the guise of new and unusual jurisdictional limitations upon its courts or an attempt of a state court to construe an otherwise valid jurisdictional provision in some strained manner for the same purpose. It was such an attempt that this court found in *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230, 78 L. Ed. 1227. There, this court refused to recognize the Alabama court's strained and unusual construction of a jurisdic-

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where the action was based upon a tort claim arising outside of the State. Douglas v. *New York, N. H. & H. R. Co.*, 248 N. Y. 580, 162 N. E. 532; *Murnan* v. *Wabash Ruy. Co.*, 246 N. Y. 244; *Gregonis* v. *P. and R. Coal and Iron Co.*, 235 N. Y. 152. It was the exercise of *that discretion* which this court upheld against a contention of imposed jurisdiction in the *Douglas case*.

tional statute whereby, without any apparent reason, there would have been excluded from the jurisdiction of the state court only a small class of actions based on federal statutes, one of which "happened" to be the case before the court. In that connection this Court said:

> ". . . The [Alabama] court would have had jurisdiction of the cause between these parties if the accident had occurred in Alabama. It would have had jurisdiction although the accident occurred in Tennessee, if the defendant had been a domestic corporation. It would have had jurisdiction, although the defendant was a foreign corporation, the plaintiff a non-resident, and the accident occurred in Tennessee, if the suit had been brought for an injury suffered while engaged in intrastate commerce. Thus, the ordinary jurisdiction of the Alabama circuit court is appropriate to enforce the right against this defendant conferred upon the plaintiff by the Federal Employers' Liability Act. And its jurisdiction was invoked according to the rules of procedure prevailing in that court."[21]

With this case, we believe the constitutional considerations applicable to the issues now before the court are exhausted, yet this case, like the others previously discussed, lends no support to the extreme position of the petitioners.[22]

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[21] 292 U. S. 230, 232, 78 L. Ed. 1227, 1229.

[22] The remaining cases cited by the petitioners in support of that contention, namely, *Minneapolis & St. Louis R. R.* v. *Bombolis*, 241 U. S. 211, 60 L. Ed. 961, *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, 86 L. Ed. 1129, and *Herb* v. *Pitcairn*, 324 U. S. 177, 89 L. Ed. 789, only serve to reemphasize the position of this court as set out in the *Second Employers Liability cases*, *Douglas* v. *New York, N. H. & H. R. Co.*, and *McKnett* v. *St. Louis & S. F. Ry. Co.*

C. *The Application of the Constitutional Considerations to This Case.*—If, as this Court made clear in the *Second Employers' Liability Cases* and *Douglas* v. *New York, N.H. & H.R.Co.*, it was not intended in those cases to interfere with the established jurisdictional limitations on state courts, the holdings in those cases have no direct relevance here. The jurisdictional limitation involved in this case existed and, in fact, received recognition by this Court long before the decisions in those cases.[23]

If, as this Court also made clear in *Douglas* v. *New York, N.H. & H.R. Co.*, a state court having jurisdiction may nevertheless refuse to entertain a suit upon a reasonable ground, i. e., a ground not designed for the purpose of hindering the execution of federal policy, it follows as of course that a jurisdictional limitation upon a state court not designed to hinder the execution of federal policy will not be swept aside to impose jurisdiction upon the state court. That is the case here.

If, as this Court finally made clear in *McKnett* v. *St. Louis & S.F. Rwy. Co.*, the essence of discrimination in a jurisdictional limitation is the purpose to impede the execution of federal policy, there is no discrimination in this case. The semantics of the petitioners in casting their contention in terms of "discrimination" will not alter the fact that the Rhode Island court, in this case, merely applied to this action under a penal statute a long established universally recognized rule of jurisdiction; and, as petitioners concede, it applied the Rhode Island view of that rule without discrimination. Indeed, this Court has invoked the same rule in

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[23] See *supra* p. 3.

an action brought here under a penal statute of the State of Wisconsin.[24]

D. *The Effect of Petitioners' Contentions.*—The petitioners devote a considerable portion of their brief (Pet. Br. pp. 26-32) to a digest of a learned article by Mr. Charles Warren,[25] in which he sets out the historical adjustments between the states and the federal government in the allocation of jurisdiction with respect to federal criminal statutes. The article is used by the petitioners to establish two conclusions (Pet. Br. pp. 31-32):

(1) There is nothing inherently impossible in a state court's voluntary assumption of jurisdiction over penal proceedings, and,

(2) Congress may require such assumption by state courts otherwise competent.

Mr. Warren agrees with the first conclusion and seems to disagree with the second.[26] We cannot understand how either of them are relevant to this case. As to the first conclusion, we do not suppose that the petitioners intend to argue that a rule of jurisdiction, in

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[24] *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265, 32 L. Ed. 239. The attempt of petitioners to distinguish this case as based on the full faith and credit clause is not supported by the reasoning of the court in that opinion. The decision is clearly based on the rule of jurisdictional limitation.

[25] *Federal Criminal Laws and State Courts*, 38 Harv. L. Rev. 545.

[26] 38 Harv. L. Rev. 545, 594-598. Although Warren in those pages states his belief that Congress has power to authorize state courts to take jurisdiction under Federal law, he repeatedly emphasizes the fact that state courts may not be permitted to take such cases "if they are not competent for the purpose" and may not be required to do so if they are unwilling.

order to withstand a charge of "discrimination", must be based only upon the ground that it is *inherently impossible* for the court to assume jurisdiction. We know of practically no rule of jurisdiction that would stand up under such a test. Accordingly it strikes us as a somewhat unfair test upon the basis of which to suggest that this Court abrogate a jurisdictional limitation formed in the crucible of federalism by this Court and all the other courts of the land over a period of a century and a quarter. As to the second conclusion of the petitioners, we suggest that it would be more relevant in a case where the Congress purported to require the assumption of such jurisdiction.

In projecting the effect of the petitioners' contention urging the expansion of the scope of the Supremacy Clause, it is important to consider that we are not dealing, in this case, with a novel jurisdictional limitation, invoked for the first time in the context of the present day relations between the states and the federal government. This rule has been a factor, over the past century, in every determination bearing on the organization and maintenance of the judicial systems of the forty-eight states. Any decision at this time that the limitation is unconstitutional would have incalculable effects upon judicial administration in the states, depending upon the extent that Congress, in the future, may "authorize" the state courts to entertain penal and criminal actions in aid of enforcement of far-reaching obligations to the federal government. Many of the problems so created, e. g., in coordinating the judicial systems of the states and federal government, in the changes that will necessary to enable already overburdened state courts to absorb an enormously increased

volume of cases,[27] and in a proper sharing of the costs between the state and federal government, are in fact problems not within judicial competence but are rather entrusted to other authorities.[28] We believe, therefore, that the abrogation of such a rule by the extension of the scope of the Supremacy Clause clearly should not be considered until Congress, after having an opportunity to deal first with the problems beyond the judicial power to solve, has indicated an intention to impose penal and criminal jurisdiction upon state courts.

III.

THERE IS NO CONSTITUTIONAL COMPULSION ON THE RHODE ISLAND COURT TO ADOPT THE FEDERAL RULE AS TO WHAT STATUTES ARE PENAL.

We have shown that, in accordance with a universally established rule of jurisdiction, a court will not enforce penal statutes other than its own. We have shown that, under this rule, the Rhode Island court correctly refused to entertain an action under §205(e) which was penal under both the Rhode Island rule and the federal rule expressed in *Huntington* v. *Attrill*. We have further shown that Congress did not in the Emergency Price Control Act attempt to alter the customary rules of jurisdiction of state courts and that the Supremacy Clause does not operate in the absence of the expressed intent of Congress to interfere with those established rules.

As a final argument, however, petitioners contend that the Supremacy Clause required the Supreme Court

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[27] See *Annual Report of the Director of the Administrative Office of the United States Courts*, September 1946 (Government Printing Office 1946) pp. 29-30, 51-56.

[28] See *Moore* v. *Mitchell*, 30 F. (2d) 600 (C. C. A. 2d, 1929), concurring opinion of L. Hand, J., at page 604.

of Rhode Island to apply the federal view as to what statutes are penal. Although we have shown that §205(e) must be considered penal even under that view, it is clear, as the Supreme Court of Rhode Island held in *Robinson* v. *Norato*, 71 R.I. 254, 43 A.(2d) 467, that the federal view is irrelevant in this case.

Petitioners' argument is based on the well known principle that in construing a federal statute a state court must apply the interpretation laid down by the federal courts. (Pet. Br. pp. 33-37). No doubt this is true. But we do not have here a question of construction of a federal statute. We have, rather, a question of interpretation of a jurisdictional rule of the Rhode Island courts. The Rhode Island court did not have before it any issue as to the interpretation or construction of any portion of the Emergency Price Control Act; it merely defined its own jurisdictional limitations.

It is settled law that questions of state law are to be decided by state courts and will not be interfered with by this Court. *Herb* v. *Pitcairn*, 324 U.S. 120, 89 L.Ed. 791; *Moore* v. *Illinois C. R. Co.* 312 U.S. 630, 634, 85 L.Ed. 1089, 1092; *Minneapolis and St. Louis R.R.* v. *Bombolis*, 241 U. S. 211, 222, 60 L.Ed. 961, 965.

CONCLUSION

The decision of the Rhode Island Court in this case was in accordance with Rhode Island law, applied within constitutional bounds, under which the court had no jurisdiction to entertain actions under §205(e) of the Emergency Price Control Act. The action of the court was clearly within the framework of the Act and

the intent of Congress. Therefore the judgment below should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 431.—October Term, 1946.

Alfred Testa and Philip B. Fleming, Temporary Controls Administrator, Petitioners,
v.
Harry Katt.

On Writ of Certiorari to the Superior Court for Providence and Bristol Counties, State of Rhode Island.

[March 10, 1947.]

Mr. Justice Black delivered the opinion of the Court.

Section 205 (e)[1] of the Emergency Price Control Act provides that a buyer of goods above the prescribed ceiling price may sue the seller "in any court of competent jurisdiction" for not more than three times the amount of the overcharge plus costs and a reasonable attorney's fee. Section 205 (c)[2] provides that federal district courts

[1] "(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: . . . . Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. . . ." 56 Stat. 34 as amended, 58 Stat. 632, 640, 50 U. S. C. App., Supp. V, § 925 (e).

[2] "The district courts shall have jurisdiction of criminal proceedings . . . and, concurrently with State and Territorial courts, of all other proceedings under section 205 of this Act. . . ." 56 Stat. 32, as amended, 58 Stat. 632, 640, 50 U. S. C. App., Supp V, § 925 (c).

shall have jurisdiction of such suits "concurrently with State and Territorial courts." Such a suit under § 205 (e) must be brought "in the district or county in which the defendant resides or has a place of business. . . ."

The respondent was in the automobile business in Providence, Providence County, Rhode Island. In 1944 he sold an automobile to petitioner Testa, who also resides in Providence, for $1100, $210 above the ceiling price. The petitioner later filed this suit against respondent in the State District Court in Providence. Recovery was sought under § 205 (e). The court awarded a judgment of treble damages and costs to petitioner. On appeal to the State Superior Court, where the trial was *de novo*, the petitioner was again awarded judgment, but only for the amount of the overcharge plus attorney's fees. Pending appeal from this judgment, the Price Administrator was allowed to intervene. On appeal, the State Supreme Court reversed. — R. I. —, 47 A. 2d 312. It interpreted § 205 (e) to be "a penal statute in the international sense." It held that an action for violation of § 205 (e) could not be maintained in the courts of that State. The State Supreme Court rested its holding on its earlier decision in *Robinson* v. *Norato*, 71 R. I. 256, 43 A. 2d 467 (1945) in which it had reasoned that: A state need not enforce the penal laws of a government which is "foreign in the international sense"; § 205 (e) is treated by Rhode Island as penal in that sense; the United States is "foreign" to the State in the "private international" as distinguished from the "public international" sense; hence Rhode Island courts, though their jurisdiction is adequate to enforce similar Rhode Island "penal" statutes, need not enforce § 205 (e). Whether state courts may decline to enforce federal laws on these grounds is a question of great importance. For this reason, and because the Rhode Island Supreme Court's holding was alleged to conflict with this

Court's previous holding in *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1, we granted certiorari. U. S. .

For the purposes of this case, we assume, without deciding, that § 205 (e) is a penal statute in the "public international," "private international," or any other sense. So far as the question of whether the Rhode Island courts properly declined to try this action, it makes no difference into which of these categories the Rhode Island court chose to place the statute which Congress has passed. For we cannot accept the basic premise on which the Rhode Island Supreme Court held that it has no more obligation to enforce a valid penal law of the United States than it has to enforce a penal law of another state or a foreign country. Such a broad assumption flies in the face of the fact that the States of the Union constitute a nation. It disregards the purpose and effect of Article VI, § 2 of the Constitution which provides: "This Constitution, and the Laws of the United States which shall be be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

It cannot be assumed, the supremacy clause considered, that the responsibilities of a state to enforce the laws of a sister state are identical with its responsibilities to enforce federal laws. Such an assumption represents an erroneous evaluation of the statutes of Congress and

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Pursuant to Rhode Island practice, the State Supreme Court remitted the case and the record to the Superior Court. That court then entered judgment in accordance with the Supreme Court's opinion. It is the judgment of the Superior Court which petitioner asked us to review on certiorari. See *Joslin Co.* v. *Providence*, 262 U. S. 668, 673.

the prior decisions of this Court in their historic setting. Those decisions establish that state courts do not bear the same relation to the United States that they do to foreign countries. The first Congress that convened after the Constitution was adopted conferred jurisdiction upon the state courts to enforce important federal civil laws,[4] and succeeding Congresses conferred on the states jurisdiction over federal crimes and actions for penalties and forfeitures.[5]

Enforcement of federal laws by state courts did not go unchallenged. Violent public controversies existed throughout the first part of the Nineteenth Century until the 1860's concerning the extent of the constitutional supremacy of the Federal Government. During that period there were instances in which this Court and state courts broadly questioned the power and duty of state courts to exercise their jurisdiction to enforce United States civil and penal statutes or the power of the Federal Government to require them to do so.[6] But after the fundamental issues over the extent of federal supremacy had been resolved by war, this Court took occasion in 1876 to review the phase of the controversy concerning the relationship of state courts to the Federal Government.

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[4] Judiciary Act of 1789, 1 Stat. 73, 77. (suits by aliens for torts committed in violation of federal laws and treaties; suits by the United States).

[5] 1 Stat. 376, 378 (1794) fines, forfeitures and penalties for violation of the License Tax on Wines and Spirits); 1 Stat. 373, 375 (1794) (the Carriage Tax Act); 1 Stat. 452 (penalty for purchasing guns from Indians); 1 Stat. 733, 740 (1799) (criminal and civil actions for violation of the postal laws). See Warren, *Federal Criminal Laws and the State Courts*, 38 Harv. L. Rev. 545; Barnett, *The Delegation of Federal Jurisdiction to State Courts*, 3 Selected Essays on Constitutional Law 1202 (1938).

[6] See *e. g.*, *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 334–337; *United States* v. *Bailey*, 9 Pet. 238, 259–260; *Prigg* v. *Pennsylvania*, 16 Pet. 539, 615; *Fox* v. *Ohio*, 5 How. 410, 438; *United States* v. *Lathrop*, 17 Johns (N. Y.) 4 (1819). See also Warren, *supra*, 580–584.

Claflin v. *Houseman*, 93 U. S. 130. The opinion of a unanimous court in that case was strongly buttressed by historic references and persuasive reasoning. It repudiated the assumption that federal laws can be considered by the states as though they were laws emanating from a foreign sovereign. Its teaching is that the Constitution and the laws passed pursuant to it are the supreme laws of the land, binding alike upon states, courts, and the people, "anything in the Constitution or Laws of any State to the contrary notwithstanding."[7] It asserted that the obligation of states to enforce these federal laws is not lessened by reason of the form in which they are cast or the remedy which they provide. And the Court stated that "If an act of Congress gives a penalty to a party aggrieved, without specifying a remedy for its enforcement, there is no reason why it should not be enforced, if not provided otherwise by some act of Congress, by a proper action in a state court." *Id.* at 137. And see *United States* v. *Bank of New York*, 296 U. S. 463, 479.

The *Claflin* opinion thus answered most of the arguments theretofore advanced against the power and duty of state courts to enforce federal penal laws. And since that decision, the remaining areas of doubt have been steadily narrowed.[8] There have been statements in cases concerned with the obligation of states to give full faith and credit to the proceedings of sister states which suggested a theory contrary to that pronounced in the *Claflin* opinion.[9] But when in *Mondou* v. *New York, N. H. &*

[7] U. S. Const. Art. VI, § 2. See also *Ex parte Seibold*, 100 U. S. 371, 392–394.

[8] *Tennessee* v. *Davis*, 100 U. S. 257; *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1; *Minneapolis & St. L. R. Co.* v. *Bombolis*, 241 U. S. 211; *McKnett* v. *St. Louis & S. F. R. Co.*, 292 U. S. 230; *Baltimore & O. R. R.* v. *Kepner*, 314 U. S. 44; *Miles* v. *Illinois C. R. Co.*, 315 U. S. 698; *Herb* v. *Pitcairn*, 324 U. S. 117, 121–123; 325 U. S. 77.

[9] See n. 10, *infra*.

H. R. Co., supra, this Court was presented with a case testing the power and duty of states to enforce federal laws, it found the solution in the broad principles announced in the *Claflin* opinion.

The precise question in the *Mondou* case was whether rights arising under the Federal Employers Liability Act, 36 Stat. 291, could "be enforced, as of right, in the courts of the States when their jurisdiction, as fixed by local law, is adequate to the occasion . . ." *Id.* at 46. The Supreme Court of Connecticut had decided that they could not. Except for the penalty feature, the factors it considered and its reasoning were strikingly similar to that on which the Rhode Island Supreme Court declined to enforce the federal law here involved. But this Court held that the Connecticut court could not decline to entertain the action. The contention that enforcement of the congressionally created right was contrary to Connecticut policy was answered as follows:

> "The suggestion that the act of Congress is not in harmony with the policy of the State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the States, and thereby established a policy for all. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State." *Mondou* v. *New York, N. H. & H. R. Co., supra* at 57.

So here, the fact that Rhode Island has an established policy against enforcement by its courts of statutes of other states and the United States which it deems penal, cannot be accepted as a "valid excuse." *Cf. Douglas* v.

New York, N. H. & H. R. Co., 279 U. S. 377, 388.[10] For the policy of the federal Act is the prevailing policy in every state. Thus, in a case which chiefly relied upon the *Claflin* and *Mondou* precedents, this Court stated that a state court cannot "refuse to enforce the right arising from the law of the United States because of conceptions of impolicy or want of wisdom on the part of Congress in having called into play its lawful powers." *Minneapolis & St. L. R. Co.* v. *Bombolis*, 241 U. S. 211, 222.

The Rhode Island court in its *Robertson* decision on which it relies cites cases of this Court which have held that states are not required by the full faith and credit clause of the Constitution to enforce judgments of the courts of other states based on claims arising out of penal statutes.[11] But those holdings have no relevance here, for this case raises no full faith and credit question. Nor need we consider in this case prior decisions to the effect that federal courts are not required to enforce state penal laws. Compare *Pelican Ins. Co.* v. *Wisconsin*, 127 U. S. 265, with *Massachusetts* v. *Missouri*, 308 U. S. 1, 20. For whatever consideration they may be entitled in

[10] It has been observed that the historic origin of the concept first expressed in this country by Chief Justice Marshall in *The Antelope*, 10 Wheat. 66, 123, that "The Courts of no country execute the penal laws of another . . ." lies in an earlier English case, *Folliott* v. *Ogden*, 1 H. Bl. 124 (1789), aff'd, *Ogden* v. *Folliott*, 3 T. R. 726 (1790), 4 Bro. P. C. 111. In that case the English courts refused to enforce an American Revolutionary statute confiscating property of loyal British subjects on the ground that English courts must refuse to enforce such penal statutes of a foreign enemy. It has been observed of this case that "of course they could as well have spoken of local public policy, and have reached the same result as surely." Leflar *Extrastate Enforcement of Penal and Governmental Claims*, 46 Harv. L. Rev. 193, 195 (1932). See *Griffin* v. *McCoach*, 313 U. S. 498; *Cf. Hines* v. *Lowrey*, 305 U. S. 85.

[11] See *e. g.*, *Huntington* v. *Attrill*, 146 U. S. 657; *Anglo-American Provision Co.* v. *Davis Provision Co.*, 191 U. S. 373; *Kenney* v. *Supreme Lodge*, 252 U. S. 411.

the field in which they are relevant, those decisions did not bring before us our instant problem of the effect of the supremacy clause on the relation of federal laws to state courts. Our question concerns only the right of a state to deny enforcement to claims growing out of a valid federal law.

It is conceded that this same type of claim arising under Rhode Island law would be enforced by that State's courts. Its courts have enforced claims for double damages growing out of the Fair Labor Standards Act.[12] Thus the Rhode Island courts have jurisdiction adequate and appropriate under established local law to adjudicate this action.[13] Under these circumstances the State courts are not free to refuse enforcement of petitioners' claim. See *McKnett* v. *St. Louis & S. F. R. Co.*, 292 U. S. 230; and compare *Herb* v. *Pitcairn*, 324 U. S. 117; 325 U. S. 77. The case is reversed and the cause is remanded for proceedings not inconsistent with this opinion.

Reversed.

[12] *Newman* v. *Geo. A. Fuller Co.*, — R. I. —, 48 A. 2d 345.

[13] Gen. Laws R. I. (1938) c. 500, § 28; c. 525, § 7; c. 631, § 4.